

No. 11450

United States
Circuit Court of Appeals
for the Ninth Circuit.

PAUL A. PORTER, Administrator, Office of Price
Administration,
Appellant,
vs.

EUGENE DASHIEL, doing business as Aluminum
Fabricators,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

FILED

JAN 24 1947

PAUL P. O'BRIEN,
CLERK

No. 11450

United States
Circuit Court of Appeals
for the Ninth Circuit.

PAUL A. PORTER, Administrator, Office of Price
Administration,
Appellant,
vs.

EUGENE DASHIEL, doing business as Aluminum
Fabricators,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Amended Answer	18
Answer	8
Appeal:	
Notice of	36
Statement of Points and Designation of Record on	42
Conclusions of Law	28
Consent to Substitution of Party Plaintiff	34
Complaint for Injunction and Treble Damages	2
Designation of Record	37
Docket Entries	38
Findings of Fact and Conclusions of Law	23
Judgment	30
Memorandum	22
Motion for Substitution of Party Plaintiff	30
Names and Addresses of Attorneys	1
Notice of Appeal	36
Order on Pre-Trial	11
Order Substituting Party Plaintiff	35
Statement of Points and Designation of Record on Appeal	42

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

SOL STERN,

W. A. STOCKMAN,

J. M. BLACKFORD,

DON EVA,

HOWARD BERGMAN,

Care Charles Kaufman, Chief Rent and
Durable Goods Enforcement Division, Port-
land District Office, O. P. A.,

925 Bedell Bldg.,

Portland 4, Oregon,

for Appellant.

VEATCH & BRADSHAW,

JOHN C. VEATCH,

705 Yeon Bldg.,

Portland 4, Oregon,

for Appellee.

In the District Court of the United States
for the District of Oregon

No. 2994

CHESTER BOWLES, Administrator, Office of
Price Administration,

Plaintiff,

vs.

EUGENE DASHIEL, dba ALUMINUM
FABRICATORS, LAKE GROVE, OREGON,
Defendants.

COMPLAINT FOR INJUNCTION AND
TREBLE DAMAGES

Comes now the plaintiff in the above entitled suit
and for cause thereof alleges:

Count One

I.

During all times herein mentioned the plaintiff
was and now is the duly appointed qualified and
acting Administrator of the Office of Price Admini-
stration of the United States of America.

II.

At all times herein mentioned the defendants
were and now are engaged in the manufacture and
sale of cast aluminum griddles having their prin-
cipal place of business at Lake Grove, in the County
of Clackamas, State of Oregon.

[Stricken by order of 2/18/46.]

IV.

Jurisdiction of this suit is conferred on this Court by Section 205(a) and Section 205(e) of the Emergency Price Control Act of 1942, as amended and extended. Pursuant to Section 4(a) of said Emergency Price Control Act of 1942 as amended and extended (Pub. L. 383, 78th Cong., 2d Sess., 57 Stat., 566 Pub. L. 108, 79th Cong. C 214, 1st Sess.) hereinafter called the "Act", there was [1*] issued MPR 188, as amended, effective in accordance with the provisions of the Act which regulation establishes and provides certain formula pricing methods for determining manufacturers' maximum prices for consumer goods other than apparel. Said Regulation provides that if the manufacturer is manufacturing commodities on which maximum prices had not been finally determined prior to August 1, 1942, and which differed from any article manufactured and sold by the manufacturer for which a maximum price had already been established, by more than minor changes in material, design, or construction, or by minor changes of material, design or construction, resulting in reduced cost of materials or any serviceability not fairly equivalent to that of the article for which a maximum price had already been established by the manufacturer, then the manufacturer is required, under Section 1499.158 of MPR 188, as amended, prior to offering such an article for sale, to submit reports to the Office of

* Page numbering appearing at foot of page of original certified Transcript of Record.

Price Administration in Washington, D. C., applying for the establishment of a maximum price, or prices, for their sales of the article. Said Regulation further provides that upon issuance of the order by the Price Administrator, or his duly authorized representative, the manufacturer may offer the article for sale in accordance with the terms of the order.

V.

In the judgment of the plaintiff, and in fact, the defendants have engaged in acts and practices which constitute violations of Section 4(a) of the Act, as amended, and extended, in that at all times between December 18, 1944, and September 11, 1945, the defendants have sold cast aluminum griddles subject to said Regulation without establishing their correct maximum price therefore, and without following the pricing practices as required by the provisions of said Regulation as hereinabove set forth, and more particularly at all times since September 12, 1945, defendants have sold cast aluminum griddles in excess of the ceiling prices established by the Administrator of Office of Price Administration, under Maximum Price Regulation 188, Order 4411 (F.R. Doc. 45-16919 filed September 11, 1945.)

VI.

During December 1944 and at all times since, defendants in violation of the provisions of said Regulation, have sold cast aluminum griddles at prices in excess of the maximum prices permitted by said MPR 188, as amended, by charging divers

customers, persons or purchasers of various classes, prices in excess of [2] the maximum prices as established by said Regulation, and the exact date thereof, the names of said customers or persons, and the amounts and extent of said overcharges, and the type and class of purchasers overcharged are at this time unknown to the plaintiff.

VII.

Defendants substantially violated the provisions of Section 4 of the Act. The issuance by the Court of an order enforcing compliance with the provisions of the Act is specifically authorized by Section 205(a) of the Act and is necessary to prevent violation and enforce compliance in the future.

Count Two

I.

Plaintiff hereby realleges paragraphs 1, 2, 3, 4, and 5 of Count I and the same are herewith incorporated by reference and made a part hereof as though they were fully set forth herein.

II.

Within one year last past the defendants sold certain cast aluminum griddles subject to said Regulation to divers customers or persons at prices in excess of the maximum prices permitted by said MPR 188, as amended. That the number of sales of said cast aluminum griddles, the exact dates thereof, the names of said customers or persons, the amounts and extent of said overcharges, and

the types and classes of purchasers overcharged are at this time unknown to the plaintiff.

III.

The transactions heretofore referred to occurred within one year immediately preceding the filing of this complaint and said sales were not made for use or consumption other than in the course of trade or business.

Wherefore the plaintiff demands:

1.—A preliminary and final injunction requiring the defendants, their agents, servants, employees and attorneys, and all persons in active concert or participation with them, to follow the pricing practices as required by the provisions of Maximum Price Regulation 188, as amended.

2.—A preliminary and final injunction, enjoining the defendant, their agents, servants, employees, attorneys and all persons in active concert or [3] participation with them, jointly or severally, from directly or indirectly selling, or offering to sell, cast aluminum griddles at prices in excess of those established by said maximum price regulation 188, as amended, or otherwise violating, or attempting, or agreeing to do anything in violation thereof, or in violation of any regulation or order adopted pursuant to said Act establishing prices for the manufacturing and sale of cast aluminum griddles.

3.—And in addition thereto, that the number and amounts of said cast aluminum griddles sold to the divers customers, and classes and type of persons

be ascertained and determined, and that a further judgment be granted in favor of the Administrator on behalf of the United States of America against the defendants for the total sums representing treble the amount by which the consideration charged and received by the defendants exceeded the maximum prices as established under Maximum Price Regulation 188, as amended, and for costs and disbursements herein incurred.

4.—Such other further and different relief as to the court may seem just and proper in the premises.

Dated at Portland, Oregon, this 29th day of November 1945.

/s/ SOL STERN,
Enforcement Attorney,

/s/ W. A. STOCKMAN,
Enforcement Attorney,

/s/ J. ROBERT PATTERSON,
Assistant U. S. Attorney,
Attorneys for Plaintiff.

[Endorsed]: Filed Nov. 29, 1945. [4]

In the District Court of the United States
for the District of Oregon

No. Civil 2994

CHESTER BOWLES, Administrator, Office of
Price Adminisration,

Plaintiff,

vs.

EUGENE DASHIEL dba ALUMINUM
FABRICATORS LAKE GROVE, OREGON
and JOHN DOE and JANE DOE,
Defendants.

ANSWER

Comes now Eugene Dashiell, defendant above named, and answering to the complaint of the plaintiff herein, admits, denies and alleges as follows:

I.

Admits paragraph I of Count I of said complaint.

II.

Answering to paragraph II, this defendant admits that he now is engaged in the manufacture and sale of cast aluminum griddles, having his principal place of business in Lake Grove, County of Clackamas, State of Oregon.

III.

Answering to paragraph III, this defendant alleges that he has no knowledge or information concerning the matters therein alleged.

IV.

This defendant admits paragraphs IV, V, and VI.

V.

This defendant denies paragraph VII.

I.

Answering to paragraph I of Count II of said complaint this defendant repeats his answers to paragraphs I, II, III, IV and V of Count I of said complaint.

II.

This defendant denies paragraphs II and III of Count II of said complaint. [5]

Wherefore, this defendant demands that plaintiff's complaint be dismissed as to this defendant, and that he may have such other and further relief as to the court may seem proper.

VEATCH & BRADSHAW,

Attorneys for defendant.

State of Oregon,
County of Multnomah—ss.

I, John C. Veatch, being first duly sworn, depose and say that I am one of the attorneys for defendant, Eugene Dashiel, dba Aluminum Fabricators, in the above entitled suit, and that the foregoing answer is true as I verily believe, and that I make

this verification for the reason that said defendant is not in Multnomah County, Oregon.

JOHN C. VEATCH.

Subscribed and sworn to before me this 2nd day of January, 1946.

ROBERT C. BRADSHAW,

Notary Public for Oregon.

My Commission expires Sept. 10, 1947.

State of Oregon,

County of Multnomah—ss.

Due service of the within Answer is hereby accepted in Multnomah County, Oregon, this 2nd day of January, 1946, by receiving a copy thereof, duly certified to as such by John C. Veatch, one of Attorneys for this answering defendant.

/s/ J. M. BLACKFORD,

Attorney for Plaintiff by
SKE.

[Endorsed]: Filed Jan. 3, 1946. [6]

In the District Court of the United States
for the District of Oregon

No. 2994

CHESTER BOWLES, Administrator, Office of
Price Administration,

Plaintiff,

vs.

**EUGENE DASHIEL, dba ALUMINIUM FAB-
RICATORS, LAKE GROVE, OREGON,**
Defendant.

ORDER ON PRE-TRIAL

The above-entitled cause come on for hearing on pre-trial in accordance with Rule 16 of the Rules of Civil Procedure for District Courts of the United States, before Honorable James Alger Fee, Judge of said Court, and there were made

The Following Appearances: The plaintiff appeared by one of his attorneys, Don Eva, and the defendant appeared by John C. Veatch of the firm of Veatch and Bradshaw, his attorneys; and

The Court having read the pleadings and having submitted to respective counsel the opportunity of arranging a pre-trial order, and based thereon, does make the following

Findings and Order

I. Parties

The parties hereto are Chester Bowles, Administrator, Office of Price Administration, as plain-

tiff, and Eugene Dashiell, doing business as Aluminum Fabricators, as defendant.

II. Admitted Facts

1. That the Office of Price Administration was duly created by Act of Congress pursuant to Section 201(a) of the Emergency Price Control Act of 1942, and amendments or extensions thereto, and that Chester Bowles was duly appointed, qualified and acting Administrator thereof.
2. That jurisdiction of this action is conferred upon this Court by Section 205(c) and Section 205(e) of the Emergency Price Control Act of 1942, as amended and extended.
3. That the defendant, Eugene Dashiell, was and at all times herein mentioned has been engaged in the manufacture and sale of cast aluminum griddles having his principal [7] place of business at Lake Grove, in the County of Clackamas, State of Oregon.
4. Pursuant to Section 4(a) of said Emergency Price Control Act of 1942, as amended and extended (Pub. L. 383, 78th Cong., 2d Sess., 57 Stat., 566, Pub. L. 108, 79th Cong., C 214, 1st Sess.) herein-after called the "Act", there was issued MPR 188, as amended, effective in accordance with the provisions of the Act, which regulation establishes and provides certain formula pricing methods for determining manufacturers' maximum prices for consumer goods other than apparel. Said Regulation provides that if the manufacturer is manufacturing commodities on which maximum prices had not been finally determined prior to August 1, 1942, and

which differed from any article manufactured and sold by the manufacturer for which a maximum price had already been established, by more than minor changes in material, design, or construction, or by minor changes of material, design or construction, resulting in reduced cost of materials or any serviceability not fairly equivalent to that of the article for which a maximum price had already been established by the manufacturer, then the manufacturer is required, under Section 1499.158 of MPR 188, as amended, prior to offering such an article for sale, to submit reports to the Office of Price Administration in Washington, D. C., applying for the establishment of a maximum price, or prices, for their sales of the article. Said Regulation further provides that upon issuance of the order by the Price Administrator, or his duly authorized representative, the manufacturer may offer the articles for sale in accordance with the terms of the order.

5. That on September 11, 1945 ceiling prices on cast aluminum griddles manufactured and sold by Defendant were established by the Administrator of the Office of Price Administration under Maximum Price Regulation 188, Order 4411 (Federal Register Doc. 45-16919 Filed September 11, 1945).

6. That in March 1942, Inca Metals Products Co., was engaged in the general business of manufacturing and selling aluminum griddles.

7. That, if defendant is not a transferee of the business of manufacturing and selling aluminum

griddles, of Inca Metals Products Co., within the meaning of the General Maximum Price Regulation, defendant has sold and delivered aluminum griddles in excess of the maximum prices established pursuant to said Regulation.

8. That, if defendant is the transferee of Inca Metals Products Co., of the business of manufacturing and selling aluminum griddles, within the meaning of said [8] Regulation, he has not sold and delivered aluminum griddles in excess of the maximum prices established pursuant to said Regulation.

III. Contentions of Plaintiff

1. Plaintiff contends that between November 29, 1944, and September 11, 1945, defendant sold and delivered aluminum griddles without having established a maximum price therefor and in excess of the maximum prices established by said Regulation.

2. That subsequent to September 11, 1945, to and including November 29, 1945, defendant sold and delivered aluminum griddles in excess of the maximum prices established for defendant's business pursuant to said Regulation.

3. That defendant is not the transferee of Inca Metal Products Co. within the meaning of the General Maximum Price Regulation.

IV. Contentions of Defendant

1. Defendant contends that, subsequent to April 28, 1942, he purchased from Inca Metals Products

Co., the business of manufacturing and selling aluminum griddles, including all machinery for making the same, stock on hand and unfilled contracts and thereafter conducted said business in an establishment separate from any other business previously owned or operated by him.

2. That in March 1942 Inca Metals Products Co., sold and delivered aluminum griddles at the price of \$7.50 each.

3. That he has never sold or delivered any griddles in excess of the maximum price Inca Metals Products Co. received for the same in March 1942.

V. Issues of Law and Facts to Be Tried

1. Is defendant a transferee of Inca Metals Products Co. of the business of manufacturing and selling aluminum griddles within the meaning of the General Maximum Price Regulation which states as follows:

1499.5 Transfers of business or stock in trade. If the business, assets or stock in trade of any business are sold or otherwise transferred after April 28, 1942, and the transferee carries on the business, or continues to deal in the same type of commodities or services, in an establishment separate from any other establishment previously owned or operated by him, the maximum prices of the transferee shall be the same as those to which his transferor would have been subject if no such transfer had taken place, and his obligation to keep records sufficient to verify such prices shall be the same. The trans-

feror shall either preserve and make available or turn over, to the transferee all records of transactions prior to the transfer which are necessary to enable the transferee to comply with the record provisions of this General Maximum Price Regulation. [9]

2.—If defendant is not a transferee of said business, the number of sales and the amounts of the same in excess of the maximum price applicable to the same, made by defendant from the 29th day of November 1944 and the 11th day of September 1945.

3. If defendant is not a transferee of said business, the number of sales and the amounts in excess of the maximum prices established by the Price Administrator for defendant's business, made by defendant subsequent to September 11, 1945 to and including November 29, 1945.

4. At what prices or prices did the Inca Metals Products Company sell and deliver aluminum griddles in March 1942.

VI. Exhibits

Pltf. Deft.	Description
1	Audit of invoice of Aluminum Fabricators.
2	Audit report of R. L. Gales, Investigator, OPÁ.
3	Ledger of Inca Metals Products (To be produced).
4	Copy of letter Inca Metals Products Co.,

Pltf. Deft.	Description
	to Office of Price Administration, October 26, 1944.
5	Copy of letter Aluminum Fabricators to Office of Price Administration, December 11, 1944.
6	Copy of Assumed Name Certificate filed by Aluminum Fabricators in Clackamas County, Oregon.
7	Copy of order Aluminum Fabricators to Inca Metals Products Co., December 11, 1944.
8	Receipt, Inca Metals Products Co., to Aluminum Fabricators.
9	Copy of Assignment Aluminum Fabricators to Fidelity Reserve & Loan Co., March 27, 1945.
10	Letter, Aluminum Fabricators to Office of Price Administration, June 19, 1945.
11	Letter, District Price Executive to Aluminum Fabricators, June 20, 1945.
12	Letter, Aluminum Fabricators to Office of Price Adminstration, June 26, 1945.
13	Letter, District Price Executive to Aluminum Fabricators, June 27, 1945.
14	Letter, District Price Executive to Aluminum Fabricators, July 19, 1945.
15	Fourth Pricing Method Report, Aluminum Fabricators.
16	Letter, District Price Executive to Aluminum Fabricators, July 27, 1945.

Pltf. Deft.	Description
17	Letter, Aluminum Fabricators to Office of Price Administration, August 1, 1945.
18	Delivery receipt book of Inca Metals.

This pre-trial order is agreed to in conference in open court. The pleadings now pass out of the case and the issues are those that are herein established. This order shall not be amended after signing except by consent of the parties or by the Court to prevent manifest injustice.

Done and dated at Portland, Oregon this day of April 1946.

.....
District Judge.

Approved:

/s/ DON EVA,

Attorney for Plaintiff.

/s/ JOHN C. VEATCH,

Attorney for Defendant.

Lodged but not signed. Sub. to J. McColloch.
4/2/46. [11]

[Title of District Court and Cause.]

AMENDED ANSWER

Comes now the defendant and, by leave of court, files this, his amended answer to plaintiff's complaint, and admits, denies and alleges as follows:

I.

Admits paragraphs I, II, IV of Count I of said complaint.

II.

Denies paragraphs V, VI and VII of Count I of said complaint.

III.

Answering to paragraph I of Count II of said complaint, defendant admits and denies as in his answer to Count I.

IV.

Answering to paragraph II of Count II, defendant admits that he sold griddles subject to Maximum Price Regulation 188, but denies that he sold them in excess of the maximum prices permitted by said regulation.

V.

Admits paragraph III of Count II of said complaint.

And, for a further and separate answer and defense defendant alleges:

I.

That defendant is a sole trader doing business under the firm name and style of Aluminmu Fabricators at Lake Grove, Clackamas County, Oregon.

II.

That Inca Metals Products Co., a corporation, was engaged in the [12] general business of manufacturing and selling cast aluminum griddles in March, 1942, and sold and delivered said griddles in said month. That on October 26, 1944, said Inca Metals Products Co., pursuant to instruction from the Office of Price Administration, filed in said

office at Portland, Oregon, a schedule of its prices for cast aluminum griddles, together with its price for the month of March, 1942.

III.

That on or about the 11th day of December, 1944, defendant purchased from said Inca Metals Products Co., its business of manufacturing and selling cast aluminum griddles, together with the machinery and equipment for manufacturing the same and thereafter conducted said business in an establishment separate from any other establishment previously owned or operated by him.

IV.

That on said 11th day of December, 1944, defendant filed in the Office of Price Administration at Portland, Oregon, a notice of said purchase together with a schedule of his prices for said product.

V.

That on the 19th day of July, 1945, the District Price Executive of the Office of Price Administration at Portland, Oregon, notified defendant that unless he, the defendant, established his prices for said product under the Fourth Pricing Method of Maximum Price Regulations 188, he would become liable for all the penalties provided for in said regulation. That, pursuant to said notice and threat and not otherwise, defendant filed an application for the establishment of prices pursuant to said Fourth Pricing Method and thereafter and on the

12th day of September, 1945, issued its order numbered 4411.

VI.

That defendant has not, to his knowledge, sold and delivered any cast aluminum griddles in excess of the maximum prices established by Maximum Price Regulation No. 188. That if any of said product has been sold by defendant in excess of maximum prices established by said regulation, such sales were made through inadvertence and mistake and not wilfully by this defendant. [13]

Wherefore, defendant demands that plaintiff's complaint be dismissed and that plaintiff recover nothing herein.

VEATCH & BRADSHAW,
Attorneys for defendant.

State of Oregon,
County of Multnomah—ss.

I, Eugene Dashiell, dba Aluminum Fabricators Lake Grove, Oregon, being first duly sworn, depose and say that I am the defendant in the above entitled suit, and that the foregoing Amended Answer is true as I verily believe.

EUGENE DASHIEL,

Subscribed and sworn to before me this 8th day of April, 1946.

[Seal] JOHN C. VEATCH,
Notary Public for Oregon.

My Commission expires 10/30/48.

State of Oregon,
County of Multnomah—ss.

Due service of the within amended answer is hereby accepted in Multnomah County, Oregon, this . . . day of April, 1946 by receiving a copy thereof, duly certified to as such by John C. Veatch, Attorney for defendant.

/s/ DON EVA mc,

Attorney for plaintiff. [14]

[Title of District Court and Cause.]

MEMORANDUM

As I stated at the trial, I need to know what record Administrator Bowles had before him before I can determine whether the Administrator, as counsel contended, passed adversely on the defendant's claim that he had transferee rights. The defendant is therefore requested to file and serve a motion supported by affidavit showing good cause under Rule 34 for an order directing plaintiff to produce and permit the inspection and copying or photographing by or on behalf of the defendant of the record on which plaintiff based his Order (M. P. R. 188, Order 4411), more particularly described in the pleadings, proposed pre-trial order and the other prior proceedings herein, and the cause is re-opened for that purpose. Plaintiff will, of course, be given opportunity to resist the motion.

In the case of Morgan v. U. S. 304 U. S. 1, 17

the Secretary answered interrogatories but, recognizing that the former Administrator is very busy, the procedure here suggested is, it seems to me, less onerous on plaintiff than the interrogatory or deposition method.

In Bowles v. West Side Lumber Co. in this court, at my request, copies of inter-office letters and telegrams leading to the order there in question were furnished without the difficulties that are being encountered in this case.

Dated April 19, 1946.

CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed April 19, 1946. [15]

[Title of District Court and Cause.]

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The above entitled cause heretofore came regularly on for hearing before the Court sitting without a jury, a trial by jury having been waived by the parties, plaintiff appearing by Frank Harrington, who was admitted specially to the bar of this court for the purpose of appearing in this case, and Don Eva, his attorneys, and defendant appearing in person and by John C. Veatch, one of his attorneys; both oral and documentary evidence having been introduced on behalf of the respective

parties hereto and the evidence being closed, the cause was submitted to the Court for its decision and determination, and the Court, being advised in the premises, now makes the following

FINDINGS OF FACT

I.

That the plaintiff is the duly appointed and acting Administrator of the Office of Price Administration pursuant to the provisions of the Act of Congress known and designated as the Emergency Price Control Act of 1942.

II.

That the defendant is a sole trader, doing business under the firm name and style of Aluminum Fabricators, at Lake Grove, in Clackamas County, Oregon, and was and is engaged in the general business of manufacturing and selling cast aluminum griddles.

III.

That in 1942 Inca Metals Products Co., a corporation, was engaged in the general business of manufacturing and selling cast aluminum griddles at said Lake Grove, and prior to the month of March, 1942, sold and delivered [16] said griddles at the price of \$7.50 each. That said Inca Metals Products Co., was out of production for some time but resumed the manufacture and sale of griddles in 1944, and employed defendant, Eugene Dashiell as its sales manager for the sale of griddles.

IV.

That, upon resuming the manufacture of griddles, said corporation, by its president and defendant, its sales manager, called upon the local Office of Price Administration and asked for instructions as to procedure to be taken in connection with prices to be charged in the sale of griddles and was instructed to write a letter to said local office setting forth the prices to be charged. That on October 26, 1944, said corporation filed with said local office a letter setting forth that fact that its price prior to March 1942 was \$7.50 which was later reduced to \$5.00 and then to \$4.00 and then to \$3.80 for lots of 50 and that it was establishing a price of \$3.00 for lots of 400 and \$3.80 for smaller lots.

V.

That in November, 1944, defendant purchased from Inca Metals Products Co., all machinery and equipment for polishing and finishing cast aluminum griddles and completing them for sale; all griddle castings on hand and all of the unfilled orders of said corporation for griddles and moved said equipment and business to an establishment separate from the establishment of Inca Metals Products Co., and separate from any establishment previously operated by defendant and thereafter continued to manufacture and sell griddles of the same type theretofore manufactured and sold by Inca Metals Products Co. That Inca Metals Products Co., did not manufacture and sell griddles after said sale to defendant.

VI.

That, on December 11, 1944, defendant notified the local Office of Price Administration in writing that he, the defendant, had purchased from Inca Metals Products Co., said business of manufacturing and selling griddles and that his prices would be the same as theretofore charged by said corporation.

VII.

That, in June, 1945, a price specialist in the local Office of Price [17] Administration notified defendant that he, the defendant, had no legal prices for the griddles he was selling and defendant again filed with said office in writing the information that he had purchased his griddle business from Inca Metals Products Co., who was manufacturing the article prior to March, 1942, and again filed with said office the prices which he the defendant was charging.

VIII.

That on July 19, 1945, a price specialist in the local Office of Price Administration notified defendant that unless he, the defendant, filed an application under the Fourth Pricing Method of Maximum Price Regulation 188 for establishment of prices for the griddles he was selling that he, the defendant, would be subject to all of the penalties provided in the Emergency Price Control Act of 1942, and that if said local office found that he, the defendant, was selling griddles without first having so established a price that it would take enforcement action against defendant. That defendant, on

or about the 24th day of July, 1945, filed an application under said fourth pricing method under duress and under protest, claiming that he was a transferee of the business of Inca Metals Products Co., and had a legal price for the griddles he was selling under the regulations of the Price Administrator. That, pursuant to said application, order No. 4411 was issued on the 11th day of September, 1945, and that he did not waive his rights as transferee of Inca Metals Products Co.

IX.

That, when said Administrator issued Order No. 4411 he only had before him defendant's said application. That the local Office of Price Administration did not forward with said application the written or any information which defendant had filed with and furnished to said office, claiming that he, the defendant, was a transferee of the business of Inca Metals Products Co., and had a price established pursuant to the provisions of the General Maximum Price Regulations of the Office of Price Administration, and the said administrator did not know any of this.

X.

That plaintiff makes no claim that defendant is not a transferee of Inca Metals Products Co., or that said transferor did not have a legal [18] price for the griddles it was manufacturing and selling at the time of said transfer or that defendant is selling or has sold griddles in excess of the price established at the time of said transfer and prior

to March 1942 or that defendant is selling or has sold griddles which are essentially different from the griddles sold at the time of said transfer and prior to March 1942 but claims that Order No. 4411 applies to all sales made by defendant and seeks to collect damages and penalties for sales made by defendant prior to the issuance of said order as well as for sales made subsequent thereto.

Based upon the foregoing Findings of Fact, the Court makes the following

CONCLUSIONS OF LAW

I.

That the defendant is a transferee of Inca Metals Products Co., of the business of manufacturing and selling cast aluminum griddles within the meaning of sec. 1499.5 of General Maximum Price Regulations issued by the Office of Price Administration.

II.

That Inca Metals Products Co., had a legal price established pursuant to the provisions of said General Maximum Price Regulations at the time of said transfer, and prior to March 1942.

III.

That defendant has not sold any griddles in excess of the maximum price established by said Inca Metals Products Co., at the time of said transfer, and prior to March 1942.

IV.

That the provisions of said General Maximum Price Regulations and particularly sec. 1499.2 thereof apply to the sales made by defendant.

V.

That the provisions of sec. 1499.158 of Maximum Price Regulation 188, under which order No. 4411 was issued do not apply to any sales made by the defendant.

Dated this 24th day of May, 1946.

CLAUDE McCOLLOCH,
Judge. [19]

State of Oregon,
County of Multnomah—ss.

Due service of the within findings and conclusions is hereby accepted in Multnomah County, Oregon, this.....day of May, 1946, by receiving a copy thereof, duly certified to as such by John C. Veatch, Attorney for defendant.

/s/ DON EVA,
Attorney for plaintiff.

[Endorsed]: Filed May 24, 1946. [20]

[Title of District Court and Cause.]

JUDGMENT

The Court, having made and filed its findings of fact and conclusions of law herein, now therefore, by virtue of said findings and conclusions it is

Ordered, adjudged and decreed that plaintiff take nothing by this action and that defendant go hereof without day.

Dated this 3rd day of June, 1946.

CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed June 3, 1946. [21]

[Title of District Court and Cause.]

MOTION FOR SUBSTITUTION OF PARTY PLAINTIFF

Comes now Paul A. Porter by his counsel and respectfully requests the Court that an order be entered herein substituting him, the said Paul A. Porter, as party plaintiff herein in the place and stead of Chester Bowles.

This motion is based upon the affidavit of Howard Bergman, one of the attorneys for plaintiff, which affidavit is hereunto attached and by this reference thereto made a part hereof, and from which it appears that the said Paul A. Porter is now the duly appointed, qualified and acting successor in office to

the said Chester Bowles as Administrator of the Office of Price Administration, that there is substantial need of continuing and maintaining this cause, and that the said Paul A. Porter has adopted and continued the action of the said Chester Bowles in continuing the enforcement of law averred in this cause to be violated.

Dated this 23rd day of August, 1946.

/s/ HOWARD BERGMAN,

One of Attorneys for Plaintiff.

[Endorsed]: Filed Aug. 23, 1946. [22]

[Title of District Court and Cause.]

**AFFIDAVIT IN SUPPORT OF MOTION TO
SUBSTITUTE PARTY PLAINTIFF**

State of Oregon,

County of Multnomah—ss.

1. I, Howard Bergman, being first duly sworn depose and say:

That I am one of the attorneys for the plaintiff in the above-entitled cause and make this affidavit on behalf of Paul A. Porter, supporting his motion to be substituted as party plaintiff herein.

2. Said motion is based upon the following grounds and reasons:

a. That Chester Bowles, party plaintiff in this action, has resigned from the office of Administrator of the Office of Price Administration, and that his resignation was duly accepted and the said Paul A.

Porter, whose appointment by the President for the office of Administrator was confirmed by the United States Senate on February 21, 1946, entered upon his duties in said office on February 26, 1946. That ever since said last mentioned date the said Paul A. Porter has been and now is the duly appointed, qualified and acting Administrator of the Office of Price Administration.

b. That there is substantial need of continuing and maintaining this cause for the reason that the same relates to the present and future discharge of the Office of Price Administration and to the enforcement of the Emergency Price Control Act of 1942, as amended, and as extended and amended by the Emergency Price Control Extension Act of 1946.

c. That there is substantial need for continuing and maintaining [23] this cause for the further reason that the subject matter thereof consists of violations of the Emergency Price Control Act of 1942 as amended, averred by plaintiff to be made by defendant, and that said Paul A. Porter has adopted and continued the action of Chester Bowles in that he, the said Paul A. Porter, is continuing the enforcement of said price control act as amended and extended as aforesaid.

d. That I am informed and believe, and therefore state the fact to be that the said Paul A. Porter desires to continue this cause by appealing to the Circuit Court of Appeals for the Ninth Circuit from the judgment entered herein on June 3, 1946, and has directed that such appeal be taken, as appears from the dispatch from W. B. Wetherall to W. S.

Williams dated August 13, 1946, a copy of which is hereinto attached marked for identification "Exhibit A" but before taking such appeal must be substituted as party plaintiff in this cause. That immediately upon the granting of an order making such substitution due notice of appeal will be given and filed.

Dated this 23rd day of August, 1946.

/s/ HOWARD BERGMAN.

Subscribed and sworn to before me this 23rd day of August, 1946.

[Seal] /s/ RICHARD J. BURKE,
Notary Public for Oregon.

My commission expires 5/14/50.

EXHIBIT A

246 PD SF 8-13-46 418P

W. S. Williams, Actg Dist Enforcement Atty
OPA PD

Re Porter v. Dashiel dba Aluminum Fabricators.
National Office Has Instructed That Appeal Be
Taken. Accordingly, Please File Notice of Appeal
And Forward Copy To Us For Transmittal To
Washington.

W. B. WETHERALL,
Regl Litigation Atty OPA
SF DM 432P.

Certified to be a true copy.

/s/HOWARD BERGMAN. [24]

State of Oregon,
County of Multnomah—ss.

Due service of the within Motion of Substitution is hereby accepted in Multnomah County, this day of August, 1946, by receiving a copy thereof, duly certified to as such by Howard Bergman, one of Attorneys for Plaintiff.

/s/ JOHN C. VEATCH,

Attorney for Defendants. [25]

[Title of District Court and Cause.]

CONSENT TO SUBSTITUTION OF
PARTY PLAINTIFF

Comes now the above named defendant and consents that an order may be entered herein substituting Paul A. Porter, the Administrator of the Office of Price Administration as party plaintiff in the place and stead of Chester Bowles.

/s/ VEATCH & BRADSHAW,
Attorneys for Defendant.

[Endorsed]: Filed Aug. 23, 1946.

State of Oregon,
County of Multnomah—ss.

Due service of the within Consent to Substitution is hereby accepted in Multnomah County, Oregon, this 23rd day of August, 1946, by receiving a copy thereof, duly certified to as such by Veatch & Bradshaw, Attorneys for Defendant.

/s/ HOWARD BERGMAN,
of Attorneys for Plaintiff.

[Title of District Court and Cause.]

ORDER SUBSTITUTING PARTY
PLAINTIFF

This matter coming on regularly to be heard upon motion of Paul A. Porter to be substituted as party plaintiff herein, and it appearing to the Court that ever since February 26, 1946, Paul A. Porter has been and is now the duly appointed, qualified, and acting successor in office of Chester Bowles, plaintiff herein, as Administrator of the Office of Price Administration and it satisfactorily appearing to the Court from the affidavit in support of said motion that there is substantial need for continuing and maintaining this cause, and it further appearing that said Paul A. Porter intends to and will appeal as provided by law from the judgment heretofore entered herein but must first be substituted as party plaintiff; and the Court having fully considered said motion and having found that sufficient cause exists for the granting thereof, and being at this time advised in the premises, it is therefore

Considered and Ordered that Paul A. Porter, Administrator of the Office of Price Administration be and hereby is substituted as party plaintiff in the place and stead of Chester Bowles.

Dated at Portland, Oregon this 24th day of August, 1946.

/s/ CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed Aug. 24, 1946. [27]

In the District Court of the United States
For the District of Oregon

No. 2994

PAUL A. PORTER, Administrator, Office of
Price Administration,
Plaintiff,
vs.

EUGENE DASHIEL, doing business as ALUMI-
NUM FABRICATORS, LAKE GROVE,
OREGON, and JOHN DOE and JANE DOE,
Defendants,

NOTICE OF APPEAL

Notice is hereby given that plaintiff above-named hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered herein on June 3rd, 1946.

/s/ W. A. STOCKMAN,
/s/ HOWARD BERGMAN,
Of Attorneys for Appellant.

State of Oregon,
County of Multnomah—ss.

Due service of the within Notice of Appeal is hereby accepted in Multnomah County, Oregon, Wednesday, this 28th day of August, 1946, by receiving a copy thereof, duly certified to as such by Howard Bergman, one of Attorneys for Plaintiff.

/s/ JOHN C. VEATCH,
Attorney for Defendant.

I hereby certify that the foregoing is a true, full and correct copy of the original Notice of Appeal.

/s/ HOWARD BERGMAN.

[Endorsed]: Filed Aug. 28, 1946. [28]

[Title of District Court and Cause.]

DESIGNATION OF RECORD

Plaintiff-Appellant, Paul A. Porter, Administrator, Office of Price Administration, hereby designates for inclusion in the record on appeal taken by Appellant from the final judgment herein, the complete record of the proceedings and evidence in the action, including, without limitation, the following:

1. Complaint
2. Answer
3. Pre-trial Order
4. Amended Answer
5. Memorandum Opinion
6. Findings of Fact and Conclusions of Law
7. Judgment
8. Transcript of Trial Proceedings, April 4, 1946
9. Motion for Substitution of Party Plaintiff
10. Consent to Substitution of Party Plaintiff
11. Order Substituting Party Plaintiff

12. Notice of Appeal
- 12½. Transcript of docket entries.
13. This Designation.

Dated at Portland, Oregon, this 3rd day of October, 1946.

HOWARD BERGMAN,
Of Attorneys for Plaintiff-
Appellant. [29]

State of Oregon,
County of Multnomah—ss.

Due service of the within Designation of Record is hereby accepted in Multnomah County, Oregon, this 3rd day of October, 1946, by receiving a copy thereof, duly certified to as such by Howard Bergman, of Attorneys for Plaintiff Appellant.

/s/ JOHN C. VEATCH,
Attorney for Defendant
Appellee.

[Endorsed]: Filed Oct. 3, 1946. [30]

[Title of District Court and Cause.]

DOCKET ENTRIES

Nov. 29, 1945—Filed complaint.

Nov. 29, 1945—Issued summons—to marshal.

Dec. 3, 1945—Filed summons with marshal's return.

Jan. 3, 1946—Filed answer of Deft. Eugene Dashiell.

Feb. 18, 1946—Record of pre-trial conference, order striking part of title and

portion of complaint, hearing continued to Feb. 25. Fee.

Feb. 25, 1946—Set for pre-trial for Mar. 4. Notice mailed.

Mar. 4, 1946—Set for pre-trial for Mar. 18. Notice mailed. Fee.

Mar. 25, 1946—Record of pre-trial—con't. to April 1. Fee.

April 1, 1946—Entered order setting for trial before court on April 4, 1946—10 a.m. McC.

April 2, 1946—Pre-trial order submitted to J. McColloch.

April 2, 1946—Issued subpoena to Don Eva.

April 3, 1946—Filed subpoena.

April 4, 1946—Entered order allowing appearance Frank Harrington as atty. for ptff. for purposes of this case; record of trial before court, order allowing amendment of answer; order reserving motion of deft. to dismiss, argument on merits & order taking under advisement. McC.

April 8, 1946—Filed amended answer of deft.

April 19, 1946—Filed memorandum opinion. Copies to attys.

April 25, 1946—Entered order setting for further hearing on April 29, 1946—10 a. m. attys. notified McC.

April 30, 1946—Entered record for further hearing. (discussion of procedure) McC.

May 6, 1946—Filed written opinion (Judgment for deft.).

May 6, 1946—Entered order to prepare Findings, Conclusions & Judgment. Attys. notified. McC.

May 10, 1946—Filed letter from O. P. A. with copies of documents.

May 24, 1946—Filed Findings of Fact & Conclusions of Law. Notice to Attys. McC.

June 3, 1946—Filed & entered Judgment for deft. notice to attys. McC.

July 26, 1946—Filed transcript of trial proceedings.

Aug. 23, 1946—Filed notice of appearance of Howard Bergman as attorney for plaintiff.

Aug. 23, 1946—Filed consent to substitution of party plaintiff.

Aug. 23, 1946—Filed motion for substitution of party plaintiff.

Aug. 24, 1946—Filed & entered order substituting party plaintiff. McC.

Aug. 28, 1946—Filed notice of appeal by plaintiff.

Oct. 3, 1946—Filed designation of record.

Oct. 4, 1946—Filed & entered order allowing plaintiff to Oct. 21, 1946 to file transcript on appeal. Leavy. [32]

United States of America,
District of Oregon—ss.

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon, do

hereby certify that the foregoing pages numbered from 1 to 32 inclusive, constitute the transcript of record upon the appeal from a judgment of said court in a cause therein numbered Civil 2994, in which Paul A. Porter, Administrator, Office of Price Administration is plaintiff and appellant and Eugene Dashiel, doing business as Aluminum Fabricators, Lake Grove, Oregon and John Doe and Jane Doe, are defendants and appellees; that said transcript has been prepared by me in accordance with the designation of contents of the record on appeal filed by the appellant and in accordance with the rules of Court; that I have compared the foregoing transcript with the original record thereof and that it is a full, true and correct transcript of the record and proceedings had in said Court in said cause, in accordance with the said designation, as the same appears of record and on file at my office and in my custody, except the Order on Pre-Trial which was not filed or signed but was lodged.

I further certify that I have enclosed a duplicate transcript of trial proceedings.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court in Portland, in said District, this 18th day of October, 1946.

(Seal) /s/ LOWELL MUNDORFF,
Clerk.

By /s/ F. L. BUCK,
Chief Deputy. [32]

[Endorsed]: No. 11450. United States Circuit Court of Appeals for the Ninth Circuit. Paul A. Porter, Administrator, Office of Price Administration, Appellant, vs. Eugene Dashiell, doing business as Aluminum Fabricators, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed October 21, 1946.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals in and
for the Ninth Circuit

No. 11,450.

PAUL A. PORTER, Administrator, Office of Price
Administration,

Appellant,

vs.

EUGENE DASHIEL, doing business as ALUMI-
NUM FABRICATORS, LAKE GROVE,
OREGON,

Appellee.

STATEMENT OF POINTS AND DESIGNATION
OF RECORD ON APPEAL

The following is a statement of points upon which the appellant will rely on the appeal in the above entitled matter.

1. The court erred in failing to find that the de-

fendant sold cast aluminum griddles in excess of the maximum prices established by the Administrator of the Office of Administration in Order 4411 issued under Maximum Price Regulation 188 (F. R. Doc. 45-16919, filed September 11, 1945, 10 F. R. 11729).

2. The Court erred in concluding as a matter of law that the provisions of Section 1499.158 of Maximum Price Regulation 188, under which Order No. 4411 was issued, do not apply to any of the sales made by the defendant.

3. The court erred in concluding as a matter of law that the defendant did not violate the Emergency Price Control Act of 1942, as amended, and Maximum Price Regulation 188, as amended, in making the sales complained of.

4. The court erred in denying plaintiff's prayer for injunctive relief.

5. The court erred in denying plaintiff's prayer for damages.

The appellant hereby designates the following matters to be printed for the record on appeal:

1. Complaint for injunction and treble damages.
2. Answer.
3. Amended answer.
4. Opinion.
5. Findings of fact and conclusions of law.
6. Judgment.

7. Order substituting party plaintiff.
8. Notice of Appeal.
9. Designation of record for transmittal to the Ninth Circuit Court of Appeals.
10. Order extending time for filing transcript.
11. This Statement of Points and Designation of Record on Appeal.

/s/ WILLIAM B. WETHERALL,
Regional Litigation Attorney,
Office of Price Administra-
tion, 47 Kearny Street,
San Francisco 8, California.

[Endorsed]: Filed Oct. 24, 1946.